



U.S. Department of Justice

National Security Division

Appellate Unit

Washington, D.C. 20530

July 19, 2018

Via ECF

Ms. Molly C. Dwyer
Clerk of Court
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *United States v. Moalin*, No. 13-50572 (Arg. & Sub. -
Nov. 10, 2016 - Berzon, Nguyen, and Zouhary)

Dear Ms. Dwyer:

I write pursuant to Federal Rule of Appellate Procedure 28(j) and in response to Defendant Basaaly Saeed Moalin's July 18, 2018 letter regarding *Carpenter v. United States*, 138 S. Ct. 2206 (2018). *Carpenter* makes clear that the acquisition of telephone call records from a third-party telecommunications provider is not a Fourth Amendment search. Therefore, Moalin's Fourth Amendment challenge to the government's collection of such records fails.

In *Carpenter*, the Supreme Court reaffirmed the holdings of *Smith v. Maryland*, 442 U.S. 735 (1979), and *United States v. Miller*, 425 U.S. 435 (1976), that "the third-party doctrine applies to telephone numbers and bank records." *Carpenter*, 138 S. Ct. at 2216. Specifically, the Court held: "We do not disturb the application of *Smith* and *Miller*." *Id.* at 2220. Rather, the Court declined to "exten[d]" the third-party doctrine to "a distinct category of information," namely more than seven days of historical cell-site location records, which the Court found to be "qualitatively different" from telephone call records because, unlike call records, cell-site location records provide "an all-encompassing record of [a person's] whereabouts" over an extended period of time. *Id.* at 2216-17, 2219.

Unlike *Carpenter*, this appeal does not concern any location information. Rather, Moalin challenges the government's collection of telephone call records, a

category of business records to which, as the Supreme Court reaffirmed in *Carpenter*, the third-party doctrine applies. Under the third-party doctrine, “[t]he Government’s collection of telephony metadata from a third party such as a telecommunications service provider is not considered a search under the Fourth Amendment.” *Klayman v. Obama*, 805 F.3d 1148, 1149 (D.C. Cir. 2015) (Kavanaugh, J., concurring); accord *United States v. Reed*, 575 F.3d 900, 914 (9th Cir. 2009); Gov’t Br. 55-61. Moalin’s Fourth Amendment challenge is without merit.

Sincerely,

s/ Jeffrey M. Smith

Jeffrey M. Smith
Appellate Counsel

cc: all counsel (via ECF)